



Getting Established and Using Exemptions August 2007

This guide provides general information to US organizations on establishing and operating in Georgia as a USAID partner organization. It is not legal advice nor is it designed to be comprehensive. USAID partners are expected to be familiar with the laws and regulations that govern their operations.

I. Registering in Georgia

The 1997 Civil Code of Georgia provides for establishment of two general types of legal entities: commercial organizations, such as limited liability companies and noncommercial organizations. The difference relates primarily to whether profits are sought. US organizations may establish themselves in Georgia through subsidiaries, branches or representative offices. USAID expects its contractors and grantees to comply with all applicable laws regarding formation and registration so that they may legally operate in Georgia.

Commercial entities are created according to the Law on Entrepreneurs. Registration requires submission (in Georgian or with a notarized Georgian translation) of an application, certain documents and a fee. As a matter of Georgian law, an entity does not become a "legal person" (or "juridical person") until the date of its registration. In Georgia, the registration of legal entities is performed by the Tax Agency performing the state and tax registration of legal entities of the Ministry of Finance (hereinafter referred to as the State and Tax Register). A certificate will be issued to registered legal entities by the State and Tax Register.

The notarized application for registration should be submitted to the tax agency according to the domicile of the entity and must contain certain information: organizational legal form, legal address, name of the entity, representation authority and full name, date and place of birth, profession and place of residence of each founding partner (if the founder is a legal person, name of the entity and registration data). In addition to the general requirements, different information is necessary for different types of commercial entities (*See Article 5, Georgian Law on Entrepreneurs*).

The tax agency processes the state and tax registration within 3 business days upon receipt of a complete application by making an entry into the entrepreneurial registry. If registration is not done within the given period or the applicant is not notified in writing concerning a justified refusal or deficiency, the registration will be deemed effective. The tax agency is required to issue a state and tax registration card immediately upon request from the applicant.

Non-commercial entities are also required to register in order to become "juridical persons." A notarized application signed by all founders and authorized representatives of the entity, the notarized minutes of the organization's founders meeting establishing the legal entity, signature sample to be used by the representatives in business relationships, receipt of the fee paid for state registration,

GEORGIA

25 Atoneli Street
Tbilisi 0105, Georgia
Tel: (995 32) 922844
Fax: (995 32) 001013
www.usaid.org.ge

AZERBAIJAN

96 Nizami Street
The Landmark Building
Baku 370010, Azerbaijan
Tel: (99412) 498 1835
Fax: (99412) 493 6839
www.usaid.gov

domicile certificate of the non-commercial legal entity (notarized consent of the owner or a contract) is necessary for registration. Non-commercial legal entities as well as branches (representations) of non-commercial legal entities are registered by the State and Tax Register. In all cases, a decision on registration is to be made within 3 days from the day of filing of an application. If no decision is made within the given period, the registration will be deemed effective.

Registration documents must contain the name and domicile of the entity, the object of its activity, the identity of founders, the identity of representatives and any possible restrictions on their authority.

The registration fees for commercial and non-commercial entities are provided in the 2002 Law of Georgia on Registration Fees. For registration of a legal entity, the following fee rates are applicable:

- (a) non-commercial legal entity – 60 GEL
- (b) a joint liability company – 60 GEL
- (c) a limited partnership – 80 GEL
- (d) a limited liability company- 160 GEL
- (e) a joint- stock company – 360 GEL
- (f) a co-operative - 120 GEL

Legal persons must apply to the tax agency to obtain a tax identification number (TIN) within 10 days from the day of registration or the beginning of economic activity.

The Tax Department provides a TIN and taxpayer's certificate to each taxpayer and tax agent within 3 days from the day of filing the application, which is used for all taxation purposes including customs duties. A TIN is necessary for a USAID partner to take advantage of the normal tax exemption procedures and to begin withholding of taxes.

II. Procedures for Obtaining VAT and Customs Duties Exemptions

The 1992 Bilateral Agreement between the Governments of the United States and Georgia creates different levels of tax and duty exemptions for USAID partners – US, foreign and local. The table in Section III outlines the most important exemptions.

Note that the exemptions apply only to costs incurred under United States Government (USG) assistance programs. Thus, an organization working with both USG and private funding must ensure that it does not improperly claim exemptions for privately funded activities and risk prosecution for tax evasion. Also note that the 1992 treaty does *not* exempt USAID partners from registration, accounting, audits by the tax authorities, tax withholding¹ or other requirements not specifically exempted by law.

On May 1, 2004, the Order of the Ministry of Finance on approving the instructions for the implementation of the 1992 Bilateral Agreement between the United States and Georgia and the “Status of Forces Agreement”, dated December 10, 2002, established procedures for obtaining tax and customs benefits for implementing USG assistance programs (*See* Order # 283 of the Ministry of Finance dated April 23, 2004). The instructions in both English and Georgian are posted on the USAID/Caucasus website.

While the instructions set the procedures for tax and customs duties exemptions, it also provides different levels of exemption for US and non-US entities implementing USG assistance programs. US

¹ It should be noted that none of the USAID partners, are exempt from withholding income tax with respect to their Georgian employees.

and non-US implementers are entitled to VAT and customs duties exemption, whereas only US Government agencies or private US organizations responsible for implementing assistance projects are exempt from other taxes, such as: any income, profit, social, property, excise and any other taxes including general state taxes related to rent, accommodations and transportation.

Furthermore, only US private organizations, which implement assistance projects under the Bilateral Agreement, or any personnel of such organization are exempt from any income tax from Georgian sources, such as profit, social, property and any other taxes, including general state taxes related to rent, accommodations or transportation. The above exemption does not extend to the personnel of such organizations who are nationals of Georgia. Also, US private organizations are not exempt from withholding income tax on behalf of their Georgian staff. The import of goods (foodstuff, supplies, equipment, household goods or other items), which are for the personal use of the personnel of the US Government or US private organizations, *other than Georgian nationals*, are exempt from customs duties.

USG implementers exercise their tax benefits based on a letter issued by the Ministry of Finance (MoF). The MoF issues the letter based on a list or updated lists of implementers provided by the USG on a monthly basis within 15 business days from the day of receiving of such a list or lists. In case of any changes to the list during the interim period, the USG will submit to the MoF an updated list or lists of its implementers.

The letter issued by the MoF will state that, within the assistance program, any purchase of goods (commodities, supplies, equipment), works or services are free of taxes (including VAT), customs duties, including, but not limited to fees and charges on the basis of the Bilateral Agreement. The letter will also provide the name of the implementer, the title of the project and the beginning and end dates of the project or program.

The instructions provide that monetization of goods are exempt from taxes, including VAT and customs duties.

Any request by the MoF and tax authorities for additional information or for funding instruments from a partner must be discussed with the US Embassy or respective USG donor organization before approaching the implementer.

The import and export of goods (commodities, foodstuff, medical supplies, equipment, supplies and other goods), also goods or commodities for monetization programs within the scope of the Bilateral Agreement are exempt from customs duties.

For the import of goods customs duties free, at least 10 days prior to importing the goods or commodities, the implementer must submit to the MoF and the USG donor agency the following information: the name and address of the implementer, a brief description of the assistance project under which the items are being imported, volume, value and list of items imported and a copy of accompanying documents of the cargo such as invoices, bills of lading and airway transportation documents. Furthermore, for importing goods for humanitarian technical assistance, the implementer must submit to the MoF the distribution plan of the goods.

If the goods are imported by the implementer for its own use in connection with the assistance program, the distribution plan as well as other relevant documents must be submitted directly to the Customs Department and indicate that the goods are intended for the implementer's own purposes. Although there were no changes or additions made to the instructions, the MoF transferred to the Customs Department the authority to issue letters permitting customs duty free importation of goods

intended for personal use. The same documentation is to be submitted to the Customs Department within the same determined dates and according to the same procedure as for import of goods intended for assistance programs.

The MoF or Customs Department must notify in writing the implementer whether it approves or disapproves the import under the assistance program within 10 business days from the day of receiving the relevant information. If the MoF or Customs Department fails to notify the implementer within the 10-day period, the import will be deemed to be approved and the items may be imported free from customs duties. In the case of disapproval, the MoF must notify the implementer, Customs Department and the USG donor agency responsible for the assistance program in writing providing the reason(s) for the disapproval.

III. Tax and Customs Duties Exemptions

Description of Tax or Duty	Tax Rate	Exempted for Program-Related Costs
VAT on goods (commodities, supplies, equipment and other goods), works and services rendered in connection with the assistance program	18%	A B C
Excise Tax ²	Fixed amount per unit or calculations based on the certain parameters, <i>e.g.</i> for automobiles - power of engine	A C
Income Tax	12% (<i>until January 1, 2011</i>) 25% (<i>from January 1, 2011</i>)	C
Profit Tax ³	20% (<i>until January 1, 2008</i>) 15 % (<i>from January 1, 2008</i>)	A
Social Tax ⁴	20% (<i>until January 1, 2008</i>) <i>No social taxes - from January 1, 2008</i>	A
Customs Duty		A B C
Property Tax ⁵		A C

A – US government or US private organizations

B – Other organizations (Georgian and non-US)

C – Employees of A who are not Georgian citizens and who are not ordinarily resident in Georgia

² See Articles 256 and 258 of the Tax Code of Georgia, December 22, 2004

³ Georgian and foreign organizations are exempt from profit tax on funds received by them in the form of grants, membership fees and donations. See Article 172.b of the Tax Code of Georgia, December 22, 2004

⁴ Georgian and foreign employers (grant recipient organizations) are exempt from the social tax on the remuneration it pays to its employees from granted funds. See Article 270.c of the Tax Code of Georgia, December 22, 2004. Note: Social Tax will be abolished effective January 1, 2008.

⁵ See Article 273 of the Tax Code of Georgia, December 22, 2004

IV. CHANGES AND AMENDMENTS TO THE TAX CODE OF GEORGIA

On July 11, 2007, Parliament passed the “Law on Changes and Amendments to the Tax Code of Georgia.” Under the new Tax Code, social taxes will be abolished beginning January 1, 2008. Article 167 of the new Tax Code provides that income tax of physical persons will be at the rate of 25% beginning January 1, 2008. However, Georgian employees working for organizations who receive grants and employees of international organizations with diplomatic status will be taxed at a rate of 12% until 2011. As of January 1, 2011, the income tax rate for these two categories of employees will increase to 25%.